

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : 10/716,248 Confirmation No. 5207
Applicant : David M. Tucker
& Charles R. Yemington
Filed : 02/13/2003
TC/AU : 2856
Examiner : David Rogers

Docket No. : 205-0034RI1
Customer No. : 29855

EFS Submission
Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231

**RESPONSE TO FINAL OFFICE ACTION AND PETITION UNDER 37 CFR §
1.183 TO ACCEPT A SUPPLEMENTAL REISSUE DECLARATION SIGNED BY
FEWER THAN ALL OF THE INVENTORS**

Dear Sirs:

This paper is filed in response to the Final Office Action mailed June 21, 2010. Enclosed herewith is a supplemental reissue declaration for inventor Charles Yemington. Pursuant to 37 CFR § 1.183 and MPEP 1414.01(III), the Patent Owner petitions the USPTO to suspend the requirements of 37 CFR § 1.175, requiring a supplemental reissue declaration signed by joint inventor David M. Tucker.

As set forth in the attached Declaration, Mr. Tucker was formerly employed by the assignee of the instant reissue application and its parent patent. Mr. Tucker has advised his former employer that all contact with him should be made through his attorney, Mr. Wayne Clawater. The undersigned has established contact with Mr. Tucker's attorney (via e-mail), and provided a reissue declaration for Mr. Tucker's signature, together with copies of all relevant materials from the reissue prosecution not previously provided. Mr. Clawater responded, indicating that he would address the matter the next day. After not hearing from Mr. Tucker's attorney for over two weeks, the undersigned sent another e-mail to the same address. No response to this second communication was ever received, nor has any further communication been received from either Mr. Tucker or Mr. Clawater.

Additionally, the undersigned has forwarded the reissue declaration and copies of all relevant materials from the reissue prosecution via certified U.S. mail and facsimile, along with a letter indicating that Mr. Tucker's signature was required and failure to respond by a date certain would constitute refusal to execute the declaration. Confirmation of receipt of both communications has been received. No response to either communication has been received.

In view of the foregoing, it is incontrovertible that Mr. Tucker—through his attorney, Mr. Clawater—has received copies of the supplemental reissue declaration and the amendments made since his previous supplemental reissue declaration. It is further incontrovertible that Mr. Tucker—through his attorney, Mr. Clawater—has received communications indicating that a signature on the reissue declaration was required and that failure to provide such signature by a date certain would be construed as a refusal to sign.

The lack of communication from Mr. Tucker or his attorney manifests an unwillingness on the part of Mr. Tucker to sign the supplemental reissue declaration pursuant to 37 CFR § 1.175. Therefore, Patentee submits this petition, and concurrently submits a supplemental reissue declaration signed by the remaining inventor, Mr. Charles Yemington, in response to the Final Office Action mailed June 21, 2010. It is respectfully submitted that this is an extraordinary situation in which justice requires waiver of the requirement that supplemental reissue declarations be signed by all inventors. Patentee therefore requests that the Office grant this petition and allow the reissue to proceed to issuance.

The Commissioner is authorized to charge the Petition Fee of \$400.00 under 37 CFR 1.17 (f) and a Three Month Extension of Time fee in the amount of \$1100.00 under 37 C.F.R. 1.17(a)(3) to Deposit Account 50-0916, referencing attorney docket number EDI4826/2050034. The Office is further authorized to charge any other fees that may be due in connection with this response or credit any overpayment to the referenced Deposit Account.

Serial No. 10/716,248
Petition Under 37 CFR § 1.183

Respectfully submitted,

By /Billy C. Allen III/ Date: December 21, 2010
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